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SUPREME COURT OF THE UNITED STATES.

No. 58.

JOS. BARCLAY, FLORENCE COLTER, AND JOHN M. SNOWDEN, PLAINTIFFS IN ERROR,

VERSUS

RICHARD W. HOWELL'S LESSEE.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

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UNITED STATES, DISTRICT OF PENNSYLVANIA, ss.—*To Richard Smith, a citizen of the State of New Jersey, lessee of Richard W. Howell, a citizen of the same State, greeting:*

Whereas, by a writ of error issuing out of the Supreme Court of the United States, directed to the judges of the circuit court of the United States holden in and for the district of Pennsylvania, in the third circuit, wherein Joseph Barclay, Florence Colter, and John M. Snowden are the complainants, the said judges are directed to send the record and process of a certain suit, with all things concerning them, so that the same may be heard before the chief justice and associate justices of the Supreme Court of the United States, on the second Monday in January next, at the city of Washington, being the seat of National Government; in which suit you, the said Richard Smith, lessee of Richard W. Howell, was original plaintiff, and Joseph Barclay, Florence Colter, and John M. Snowden, defendants, in a plea of trespass and ejectment, that the record and process aforesaid being inspected, they, the said Supreme Court, may cause to be done thereupon what of right ought to be done: and the said Joseph Barclay, Florence Colter, and John M. Snowden having made an assignment of errors, and given good and sufficient security that the plaintiffs in error shall prosecute their writ to effect, and answer all such costs as upon an affirmance of the judgment of the said circuit court may be adjudged to the respondents in error, you are hereby cited to appear (if you see cause) at the Supreme Court, at the time and place aforesaid, to answer to the said writ of error, and the errors assigned by the said Joseph Barclay, Florence Colter, and John M. Snowden.

Given under my hand and seal, this seventeenth day of July, in the year of our Lord one thousand eight hundred and twenty-nine.

JOS. HOPKINSON, [L. S.]
One of the judges of the said court.

Served a copy on Mr. Chancey, 30th July, 1829: so answers
J. CONARD, *M. C.*

UNITED STATES, set.—*The President of the United States to the Judges of the circuit court of the United States holden in and for the district of Pennsylvania, in the third circuit, greeting:*

Because that, in the record and process, and also in the rendering of judgment in a suit before you or some of you, between the lessee of Richard W. Howell, a citizen of the State of New Jersey, plaintiff, and Joseph Barclay, Florence Colter, and John M. Snowden, citizens of the State of Pennsylvania, defendants, in a plea of trespass and ejectment, a manifest error has intervened, to the great damage of the said Joseph Barclay, Florence Colter, and John M. Snowden, as in their complaint has been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf you are hereby commanded, that, if judgment thereof be given, then, under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the chief justice and the associate justices of the Supreme Court of the United States, on the second Monday in January next, at the city of Washington, being the seat of the National

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Government, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable John Marshall, Chief Justice of the Supreme Court of the United States, at Washington aforesaid, this day of in the year of our Lord one thousand eight hundred and twenty-nine, and in the fifty-third year of the independence of the said United States.

D. CALDWELL, *Clk. C. C.* [L. S.]

Allowed by
17*th July*, 1829.

JOS. HOPKINSON.

Pleas before the honorable the Judges of the circuit court of the United States in and for the district of Pennsylvania, in the third circuit, at Philadelphia, of April session, in the year of our Lord one thousand eight hundred and twenty-seven.

It is thus contained:

In the district court of the United States in and for the western district of Pennsylvania, No. 11, *October term*, 1826.

BALDWIN, FETTERMAN, BIDDLE.

RICHARD SMITH, *lessee of Richard W. Howell, a citizen of the State of New Jersey,*
vs.
WILLIAM STILES, *a citizen of the State of Pennsylvania, with notice to Joseph Barclay, Florence Colter, and John M. Snowden, citizens of the same State, tenants in possession.* } *Ejectment.*

Application by Mr. Baldwin, attorney for plaintiff, to have this cause certified under the act of Congress of March 3d, 1821, to the circuit court of the United States, district of Pennsylvania, which was resisted by Mr. Biddle, who moved that it should be certified to the district judge of the western district of Virginia, under the act of Congress of May 20th, 1826. The judge, sustaining the application of Mr. Baldwin, hereby certifies that he was counsel for the defendants in a former action of ejectment involving the same matter in controversy, which fact the clerk will cause to be entered on the records of the court. And it is hereby ordered, that an authenticated copy hereof, with all the proceedings in the aforesaid suit, be forthwith certified to the circuit court of the United States of the eastern district of Pennsylvania.

WILLIAM WILKINS.

PITTSBURG, 18*th December*, 1826.

UNITED STATES, *western district of Pennsylvania, set.*

I, Edward J. Roberts, clerk of the district court of the United States for the said district, do hereby certify the foregoing to be a true copy of the original order remaining on file in my office.

In testimony whereof, I have hereunto set my hand, and the seal of the said court, this 18th day of December, A. D. 1826, and of the independence of the United States the fifty-first.

E. J. ROBERTS, *Clk.* [L. S.]

Joseph Barclay, Florence Colter, and John M. Snowden, mayor of the city of Pittsburg, of the district aforesaid, yeomen, all citizens of the district of Pennsylvania, were attached to answer Richard Smith, a citizen of the State of New Jersey, of a plea wherefore with force and arms they entered into one messuage, a lot, or piece and parcel of land, lying between Water street and the river Monongahela, with the appurtenances, situate and being in the city of Pittsburg, in the district aforesaid, which Richard W. Howell, a citizen of the State of New Jersey, had demised to the said Richard Smith for a term which is not yet expired, and ejected him from his said farm, and other wrongs to him did, to the great damage of the said Richard, and against the peace of the United States.

And thereupon the said Richard, by Henry Baldwin, his attorney, complains, that, whereas the said Richard W. Howell, on the twenty-eighth day of September, in the year of our Lord one thousand eight hundred and twenty-six, at the district aforesaid, had demised to the said Richard the tenements aforesaid, with the appurtenances, to have and to hold the same to the said Richard and his assigns from the day next immediately preceding the day aforesaid, for and during and unto the full end and term of ten years thence next ensuing, and fully to be complete and ended; by virtue of which said demise the said Richard entered into the said tenements, with the appurtenances, and was thereof possessed. And the said Richard being so thereof possessed, the said Joseph Barclay, Florence Colter, and John M Snowden, afterwards, to wit, on the said twenty eighth day of September, in the year of our Lord one thousand eight hundred and twenty-six, with force and arms, &c., entered into the said tenements, with the appurtenances, which the said Richard W. Howell demised to the said Richard in form aforesaid, for the term aforesaid, which is not yet expired, and ejected him out of his said farm, and other wrongs to him did, to his great damage, and against the peace of the United States. And the said plaintiff avers, that the land for which this ejectment is brought, and which is in dispute in the cause, exceeds five hundred dollars in value; whereupon the said Richard saith he is injured, and hath sustained damage to the value of five thousand dollars, and thereupon he brings suit, &c.

And thereupon the said Joseph Barclay, Florence Colter, and John M. Snowden, by Joseph R. Ingersoll, Esq., their attorney, come and defend the force and injury, when, &c , and say that they are in no wise guilty of the trespass and ejectment aforesaid, as the said Richard Smith above complains against them, and thereof they put themselves upon the country, and the said Richard Smith does the like: therefore, let a jury thereupon come before the judges aforesaid, at Philadelphia aforesaid, on the 11th day of October next, by whom, &c., and who neither, &c., to recognise, &c., because as well, &c.; the same day is there given to the parties aforesaid, then and there, &c. On which said eleventh day of October, in the year of our Lord one thousand eight hundred and twenty-seven, come the parties aforesaid, by their attorneys aforesaid; and further day is given to the parties aforesaid until the eleventh day of April next, then and there, &c.: therefore, as before, let a jury come thereupon before the said judges, on the said eleventh day of April, by whom, &c., and who neither, &c., to recognise, &c., because as well, &c.; the same day is there given to the parties aforesaid, then and there, &c. On which said eleventh day of April, in the year of our Lord one thousand eight hundred and twenty-eight, come the parties aforesaid, by their attorneys aforesaid; and further day is given to the parties

aforesaid until the 11th day of October next: therefore, as before, let a jury come thereupon before the said judges, on the said eleventh day of October, by whom, &c., and who neither, &c., to recognise, &c, because as well, &c.; the same day is there given to the parties aforesaid, then and there, &c. On which said eleventh day of October, in the year of our Lord one thousand eight hundred and twenty-eight, came the parties aforesaid, by their attorneys aforesaid; and further day is given to the parties aforesaid until the eleventh day of April next: therefore, as before, let a jury come thereupon before the said judges, on the said eleventh day of April, by whom, &c., and who neither, &c., to recognise, &c., because as well, &c.; the same day is there given to the parties aforesaid, then and there, &c.

Afterwards, to wit, at a session of the same court, holden at Philadelphia aforesaid, before the judges aforesaid, on the twenty-seventh day of April, in the year last aforesaid, came the parties aforesaid, by their attorneys aforesaid, and the jurors of the jury aforesaid, being called, likewise come, to wit, John K. Graham, Thomas Hulme, John Markland, William Newbold, Sansom Perot, William Parker, Charles A. Poulson, Thomas C. Rockhill, Jacob Ritter, John Siter, jr., Ludwick Sharp, Daniel Smith, jr., who, being duly empannelled, returned, elected, tried, and sworn or affirmed, to speak the truth of the matter within contained, upon their oaths and affirmations aforesaid respectively do say, that the said Joseph Barclay, Florence Colter, and John M. Snowden, are guilty of the trespass and ejectment aforesaid, in manner and form as the said Richard Smith above complains against them, and assess the damages of the said Richard Smith, by reason of that trespass and ejectment, besides his costs and charges to six cents, and for those costs and charges to six cents.

Whereupon the said Richard Smith, by his attorney aforesaid, prays judgment of and upon the verdict aforesaid; and the said Joseph Barclay, Florence Colter, and John M. Snowden, by their attorney aforesaid, say that the court here ought not to render judgment of and upon the said verdict, and pray that judgment of and upon the said verdict may be staid, because the same is insufficient and erroneous, and given against the direction of the court to the jury, and pray that the verdict aforesaid may be quashed, and that the issue aforesaid may be tried anew by other jurors, to be afresh empannelled, because—

1. The verdict is uncertain and insufficient in not ascertaining a *locus in quo*, that being left uncertain by the declaration: also,

2. Because by the declaration and verdict the whole question at issue between the parties is left uncertain and undetermined, and the controversy remains unsettled.

3. Because there was no evidence to show possession in the defendants in the land described in the declaration, if the description be at all applicable to any ground.

4. Because the declaration claims "one messuage, a lot, or piece or parcel of land, lying between Water street and the river Monongahela, with the appurtenances, situate and being in the city of Pittsburg," and the verdict is generally for the plaintiff, without describing position, extent, boundaries, or situation of the land claimed.

5. Because, if the finding of the jury were intended to embrace part of the premises stated in the declaration, it should have designated particularly such part.

Whereupon, for that it appears to the court here that the said verdict is in no wise insufficient or erroneous, and that the same ought not to be quashed, and that no new trial ought to be had of the issue aforesaid, therefore it is considered by the court here, that the said Richard Smith have the possession of his term aforesaid yet to come of and in the premises aforesaid, with the appurtenances, and his damages aforesaid assessed by the jury aforesaid, and also fifty-six dollars and thirty one cents for his costs and charges aforesaid, by the court here awarded to the said Richard Smith, with his assent by way of increase, which said damages amount, in the whole, to fifty-six dollars and forty-three cents.

UNITED STATES, *district of Pennsylvania, ss.*

I certify the foregoing to be a true and faithful copy of the record of the judgment of the circuit court of the United States in and for the district of Pennsylvania, in the third circuit, in a certain action of trespass and ejectment therein, lately depending between the lessee of Richard W. Howell, plaintiff, and Joseph Barclay, Florence Colter, and John M. Snowden, defendants.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the said court, at Philadelphia, this 28th day of December, A. D. 1830, and in the fifty-fifth year of the independence of the said United States.

D. CALDWELL, *Clk. C. C.* [L. S.]

Circuit court of the United States, third circuit, in and for the eastern district of Pennsylvania, of October sessions, 1826. *No.* 12.

RICHARD SMITH, *lessee of Richard W. Howell,*
vs.
JOSEPH BARCLAY, FLORENCE COLTER, and JOHN M. SNOWDEN.

Be it remembered, that, at October sessions, in the year of our Lord one thousand eight hundred and twenty-six, came the above named plaintiff, and empleaded in this court the above named defendants of a plea, wherefore, with force and arms, they entered into one messuage, a lot, or piece and parcel of land, lying between Water street and the river Monongahela, with the appurtenances, situate and being in the city of Pittsburg, in the district aforesaid, which Richard W. Howell, on the 28th day of September, 1826, had demised to the said plaintiff, to have and to hold for the term of ten years; and the said plaintiff entered into the said tenements, with the appurtenances, by virtue of the said demise, and was thereof possessed; and the said defendants afterwards entered, with force and arms, &c., into the said tenements, with the appurtenances, and ejected him out of his said farm, to his great damage, &c.

And the said defendants thereupon pleaded that they were not guilty of the said supposed trespasses and ejectment so laid to their charge, or of any part thereof, in manner and form as the said plaintiff complained against them.

And thereupon the issue was joined between the said parties. And afterwards, to wit, at the April sessions of the said court, one thousand eight hundred and twenty-nine, before the honorable Bushrod Washington, the aforesaid issue so joined came to be tried by a jury, for that purpose duly empannelled; at which day came the said parties, by their respective attor-

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neys, and the jurors of the jury aforesaid also came, and were, in due manner, then and there, chosen to try the same issue, under their oaths and affirmations. And the counsel for the said plaintiff, to maintain and prove said issue, gave in evidence, among other matters, a warrant of survey, dated January 6, 1769, for 5,000 acres of land about Pittsburg; and a survey, dated the 27th of March, 1769, and returned 19th May, 1769, for 5,766 acres, including both sides of the river Monongahela; and a letter from Tench Francis to George Woods, dated April 22d, 1784, (hereto annexed, marked A;) and another letter from the same to the same, dated 30th September, 1784, (hereto annexed, marked B;) and a plan of the town of Pittsburg, (hereto annexed, marked C;) and, after exhibiting full powers in John R. Coats from John Penn and William Penn, and Juliana, his wife, gave in evidence a deed of conveyance from the said John Penn and William Penn, and Juliana Catharine, his wife, by their attorney, John R. Coats, to Alexander Wilson, dated September 26, 1814, (hereto annexed, marked D;) and sundry legal mesne conveyances from the said Alexander Wilson to the les or of the plaintiff; and also a plan (hereto annexed, marked E) proved to have been made by Thomas Vickroy, who proved that he was an assistant to George Woods in laying out the town of Pittsburg, and that he made and kept the said plan; and gave in evidence the depositions of Aaron Hart and William Graham, jr., (hereto annexed, marked F;) and proved by Robert Hare that he had examined the annexed draught, (marked G,) and compared it with the ground, and verified the measurements thereon; and also gave in evidence certain ordinances of Pittsburg, bearing date November 2, 1816, 29th May, 1824, 7th January, 1825; and gave in evidence a deed from John Ormsby and wife to Isaac Greg and wife, dated November 5, 1798, (hereto annexed, marked H;) and an act of Assembly of Pennsylvania to establish a ferry, and vest the right in John Ormsby, dated 11th March, 1784; and an article of agreement between John Penn, jr. and John Penn, of the one part, and Isaac Craig and Stephen Bayard, of the other part, dated January 22d, 1784, (hereto annexed, marked I;) and a conveyance from the same parties to the same, dated 31 December, 1784, (hereto annexed, marked J;) and an act of Assembly of Pennsylvania, dated 5 March, 1804; and Holme's Plan of Philadelphia, as bound up with the ordinances of the city of Philadelphia; and two patents, dated, respectively, 27 June, 1735, and 24 June, 1691, to Thomas Lawrence and William Solway, (hereto annexed, marked K and L;) and the original survey of the town of Easton, (hereto annexed, marked M;) and a receipt to Craig and Bayard, dated 27 August, 1784, (hereto annexed, marked N;) and proved by Frederick Beates that Peter Millar was a scrivener, who did the proprietaries' conveyancing; and proved by Alexander Johnston that he is president of the common council of the city of Pittsburg; that the city of Pittsburg defends this suit: that the defendants are officers of the city; Barclay was a commissioner; that Colter is wharf master; Snowden was mayor: that they claim a right co extensive with the ordinance, from Grant street extending to West or Short street: that as far as Wood street the width of the bank is at least sixty feet; a ravine comes in at Wood street, and there was scarcely room for a cart or wagon to pass until it was improved or filled up: it is a bold shore; the water comes into the edge of the bank, to the foot of the bank: it has been extended by dirt thrown in from cellars, and by the construction of the wharves which have been thrown into the river; two or three wharves have been erected: that when he first knew the beach, it was used

only as a landing: at low water there was very little beach along the whole front of the city: coal has been thrown out from the glass works, and it has extended the ground: it is upwards of thirty feet from the lowest to the highest water mark: there was a fresh in the river of eight or ten feet a few days ago. And, on his cross-examination, he proved that he arrived in Pittsburg in March, 1803: at Redoubt's alley the street might be said to have terminated; a foot pavement was between that and the extreme street, but no carriage-way from West street: some buildings was constructed by Mr. Ormsby near Chancery lane; a windlass, with an archway under the street: some few individuals were prostrated by the ordinance; their obstructions lasted several years before the passage of the ordinance: the water goes entirely over the bank, and between Redoubt alley and West street; it is sometimes entirely overflowed; the bank is nearly perpendicular: the whole distance from Grant street to the point exceeds three-quarters of a mile Among other evidence, the counsel for the defendants offered the deposition of Samuel Ewalt, for the purpose of proving various declarations of George Woods, at the time he was engaged in laying off the town of Pittsburg, in relation to Water street; and the said deposition, and other evidence to that effect, to wit, the evidence of J Finley, were objected to by the plaintiff's counsel, and rejected by the court, (prout the same, hereto annexed.) And the said counsel for the defendants excepted to such rejection, and requested the court to seal this bill of exceptions, whereby the same might appear, which was done accordingly.

And the counsel for the defendant thereupon proved by Thomas Vickroy that there was no straight line run along the river, but it was according to its meanderings: that the plot proved by him had been in his possession until two years ago, when he gave it to Mr. Craig: the first work they did was to run down from where Grant street now is; they did not go down but up on the bluff; next ran the line up the Alleghany river; then where Washington street now is; thence across to Grant's hill; thence along Grant's hill to the place of beginning: this was done to circumscribe the ground including the old fort; and then made some diagram of it, and staked it off; no street was left on the Alleghany bank: Mr. Woods got spades, and hired men, and laid out lots, and staked out every where except where the old garrison was begun, then at Market street, at what was Samuel Ewalt's house, went down the river according to a range of houses already built, laid out no cross streets to the river; the streets ran to Water street, but not beyond: they ran a straight line from Grant street to beyond the military town, and then varied the course: Water street determined the course of the others; it was laid out first.

And the defendants' counsel thereupon called John R. Coats as a witness, who gave in evidence that he was many years agent for the proprietors' family, and made sale and disposition of a great deal of property as such from 1800 to 1818: he never offered any lots for sale on the margin of the Monongahela river in Pittsburg: he never sold any property in Pittsburg: he never knew of any property for sale there at all, until he was told of this in question: he had nothing in his possession that would show any property there except the draught, and the manor of Pittsburg, in the possession of Mr. Beates, the scrivener, under his control.

And the counsel for the defendants proposed to inquire of the witness what inducements had been offered to him by Alexander Wilson, and others associated with him, to sell, and that he had at first refused to do so, on ac-

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count of having no directions, or property being there of the Penn family; but this evidence was objected to and overruled by the court. And the defendants' counsel excepted to that decision of the court, and requested the judge to seal a bill of exceptions, that the same might appear, which was done accordingly.

And the said John R. Coats further testified, that he never was paid any money as proprietaries' agent for this conveyance: he took a mortgage; he never received either principal or interest thereon.

And the defendants' counsel gave in evidence various deeds for lots in Water street and on the river Alleghany, (hereto annexed, marked O;) and a mortgage from Alexander Wilson to John Penn and William Penn, dated 26 September, 1814, (hereto annexed, marked P;) and the charter of the city of Philadelphia, in the appendix to Proud's History of Pennsylvania, and the note P to Gordon's History of Pennsylvania.

And the learned judge thereupon gave in charge to the jury, among other things,

The counsel for the defendants contended, that in laying out the town of Pittsburg, those parts included within its compass, which were not reserved to the proprietaries, were appropriated to the public use. But it was given in charge to the jury, that this slip of land, if it was not wholly given to the public as a street, or so much of it as was not so given, was vested in the Penns as the undisputed owners of it. That the court could not understand how a piece of land could be incident to another piece of land; and if it could, still no evidence has been given of title in the corporation to a single foot of ground within the limits of the city. That if a street or streets leading to the Monongahela river were necessary to the enjoyment, by the inhabitants, of their property in the town, derived from the persons under whom the plaintiff claimed, they are entitled to have them laid off over the land in dispute, of right and not of favor; and the law points out a mode by which this right may be enforced. But the right of is not thereby divested out of the owner of the other parts of the ground, which, beyond all question, remain in him, as it was before the streets shall have been laid out. The only difference in this respect, between the city of Philadelphia and Pittsburg, is, that William Penn granted expressly to the former this privilege of streets leading from Front street to the river, which the law would have implied as an incident, and which may be implied in relation to the latter city. If the ground in controversy was not dedicated to the public as a street, it remained in the Penns, subject to the incidental right which has been spoken of; and the only right of the corporation would be to regulate and preserve such streets as should be laid out running over it to the river.

And the court did further give in charge to the jury, that the construction of the deeds to Ormsby, and to Craig and Bayard, was not such as the defendants' counsel contended, viz. that they were consistent with the dedication of a space south of the Water street lots to the river, but that these deeds were to be construed as conveying ground to the river, subject to the easement over a part of them.

And the court did further instruct the jury, that, in point of law, they must be satisfied, not merely that the open space was used by the inhabitants of Pittsburg or others, but that it was used as a *highway* or street; and, in weighing the evidence on this point, they would naturally inquire whether, from the nature of the ground, it was capable of being so used;

and, that as to the acts of ownership exercised by the corporation in the way which had been related, it was manifest that they were altogether inconsistent with the right asserted in behalf of the public, since if the whole of this ground, to low water mark on the river, was dedicated for a street, it was vested as such in the public, subject to be regulated and preserved by the corporation, and could not legally be treated and used as private property by that body.

And the learned judge finally gave in charge, that if the jury should decide that this ground, to the river, was not granted or dedicated as a street, and that the spot in dispute in this suit constituted no part of the *street*, it passed to Wilson under the deed to him, and consequently to the plaintiff.

To which said several matters, so given in charge by the learned judge, the counsel for the defendants did object. And in as much as the same and the evidence in the cause do not appear by the record, the defendants' counsel did propose their aforesaid exceptions, and did request the learned judge to put his seal to this bill of exceptions, which was thereupon done.

BUSHROD WASHINGTON. [SEAL.]

The counsel for the defendants contended, that, in laying out the town of Pittsburg, those parts included within its compass, which were not reserved to the proprietaries, were appropriated to the public use. But it was given in charge to the jury, that this slip of land, if it was not wholly given to the public as a street, or as much of it as was not so given was vested in the Penns as the undisputed owners of it, that the court could not understand how a piece of land could be incident to another piece of land; and if it could, still no evidence has been given of title in the corporation to a single foot of ground within the limits of the city. That if a street or streets leading to the Monongahela river were necessary to the enjoyment, by the inhabitants, of their property in the town, derived from persons under whom the plaintiff claimed, they are entitled to have them laid off over the land in dispute, of right and not of favor; and the law points out a mode by which this right may be enforced. But the right of soil is not thereby divested out of the owner of the other parts of the ground, which, beyond all question, remain in him as it was before the street shall have been laid out. The only difference in this respect, between the city of Philadelphia and Pittsburg, is, that William Penn granted expressly to the former this privilege of streets leading from Front street to the river, which the law would have implied as an incident, and which may be implied in relation to the latter city. If the ground in controversy was not dedicated to the public as a street, it remained in the Penns, subject to the incidental right which has been spoken of; and the only right of the corporation would be to regulate and preserve such streets as should be laid out running over it to the river.

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ants of Pittsburg or others, but that it was used as a *highway* or *street;* and, in weighing the evidence on this point, they would naturally inquire whether, from the nature of the ground, it was capable of being so *used;* and, that as to acts of ownership exercised by the corporation in the way which had been stated, it was manifest that they were altogether inconsistent with the right asserted in behalf of the public, since if the whole of this ground, to low water mark on the river, was dedicated for a street, it was vested as such in the public, subject to be regulated and preserved by the corporation, and could not legally be treated and used as private property by that body.

And the learned judge finally gave in charge, that if the jury should decide that this ground, to the river, was not granted or dedicated as a street, and that the spot in dispute in this suit constituted no part of the *street*, it passed to Wilson under the deed to him, and consequently to the plaintiff.

To which said several matters, so given in charge by the learned judge, the counsel for the defendants did object. And in as much as the same and the evidence in the cause do not appear by the record, the defendants' counsel did propose their aforesaid exceptions, and did request the learned judge to put his seal to this bill of exceptions, which was thereupon done.

BUSH. WASHINGTON.

PENNSYLVANIA, ss.—*By the proprietaries.*

These are to authorize and require you to survey, or cause to be surveyed, for our use, the quantity of five thousand acres of land about Pittsburg, to include the fort, and the *cole* mine opposite or nearly opposite the fort on the other side the river, and make return thereof into our surveyor's office, and for so doing this shall be your sufficient warrant.

Witness John Penn, Esq., Lieutenant Governor and Commissioner of Property of the said *providence*, who, by virtue of certain powers from the said proprietaries, hath hereunto set his hand, and caused the seal of the land office to be hereunto affixed, at Philadelphia, this sixth day of January, one thousand seven hundred and sixty-nine.

JOHN PENN. [SEAL.]

To JOHN LEEKENS, Esq., *Surveyor General.*

In testimony that the above is a copy of the original, filed in the Surveyor General's office, I have hereunto set my hand, and the seal of said office, at Harrisburg, the 4th day of May, 1821.

JACOB SPANGLER, *S. G.*

On the back of which, it is thus endorsed: 1769, January 6th, Westmoreland, 5,000 acres, proprietaries. Returned, &c., 19th May, 1769, called Pittsburg.

Survey referred to, dated 27th March, 1769, and returned 19 May, 1769, for 5,766 acres, including both sides of the river Monongahela.

A draught of a tract of land situate on both sides of the Monongahela river, and on the southeast side of the Alleghany, in the county of Cumberland, including fort Pitt and the town of Pittsburg, bounded and described as follows, viz. Beginning at a marked Spanish oak, standing on the south

side of the Monongahela river; thence south, 200 perches, to a marked hickory; thence west, 150 perches, to a marked white oak; thence N. 35 W. 144 perches, to a marked white oak; thence west, 518 perches, to a marked white oak; thence north, 758 perches, to a post; thence east, 60 perches, to a post; thence N. 14 E. 218 perches, to a white walnut at the mouth of the Saw Mill creek, on the Ohio river; thence up the Ohio river, S. 62 E. 202 perches, to a white walnut opposite the point; thence, crossing the Monongahela river, and up the southeast side of the Alleghany river, N. 71 E. 377 perches, N. 49 E. 212, N. 39 E. 74, and N. 50 E. 99 ps., to a Spanish oak on the said river; thence, by Mr. Croghan's claim, S. 60 E. 249 perches, to a marked sugar tree, and S. 85 E. 192 perches, to a marked sugar tree; thence, by vacant land, S. 18 E. 236 perches, to a marked white oak; thence, by Barren's, S. 40 W. 150 perches, to a marked white oak; thence, by Samuel Sample's improvement, W. 192 perches, to a marked hickory, and S. 65 W. 74 perches, to a marked red oak, on the north side of the Monongahela river; thence, crossing said river, S. 78 W. 308 perches, to the place of beginning, containing five thousand seven hundred and sixty-six acres, and the allowance of 6 acres per cent. for roads and highways. Surveyed the 27 day of March, 1769, for the honorable Thomas Penn and Richard Penn, Esquires, true and absolute proprietaries of the province of Pennsylvania, in pursuance of a warrant, bearing date the 5th day of January, 1769.

WM. THOMPSON, *D. S.*

To JOHN LEEKENS, Esq., *Surveyor General.*

[*For plat, see original record.*]

On the back of which, it is thus endorsed: Westmoreland, the honorable proprietaries, 5,766 acres, at fort Pitt, called Pittsburg. Returned, &c., 19th May, 1769.

Exhibit A.

PHILADELPHIA, 22*d April*, 1784.

SIR: By directions of Messrs. Penns, I take the liberty to request you to undertake the laying out the town of Pittsburg, and dividing all the other parts of the manor into proper lots and farms, and to set a value on each, supposing them clear of any kind of encumbrances; in doing of which, be pleased to make the proper inquiries, and ascertain the previous claims (pretended or real) the present settlers, and all others set up. The whole of this manor being intended for immediate sale, I wish you would point out the best method to effect it, and, if agreeable to you to transact this business, inform me on what terms you will do it. All expenses, and your charges for making the above survey, &c., I will cheerfully pay you. Enclosed you have for your government a draught of the manor.

I am, with the greatest respect, yours, &c.

TENCH FRANCIS,
Attorney for John Penn, jr. and John Penn.

Exhibit B.

PHILADELPHIA, 30*th September*, 1784.

GEORGE WOODS, Esquire:

DEAR SIR: As attorney to John Penn, jr. and John Penn, Esquires, late proprietors of Pennsylvania, I hereby approve of the plan you have made

of the town of Pittsburg, and now confirm the same, together with the division of the out-lots and the other parts of the manor of Pittsburg. The several appliers, agreeable to your list furnished me, may depend on having deeds for their lots and plantations whenever they pay the whole of the purchase money, provided they do it before — mas next; but if they neglect to pay their purchase money agreeable to your valuation, at my stipulated time, I shall not hold myself bound.

Your most obliged friend, and humble servant,

TENCH FRANCIS,

Attorney to John Penn, jr. and John Penn, Esq's.

A true copy of the original letter of confirmation, as submitted to the jury in the case of lessee of Howell *vs.* Ormsby, made this 20th day of October, 1821, by me,

NEVILLE B. CRAIG.

Endorsed: 1784, September 30, Tench Francis to George Woods, confirming plan at Pittsburg.

Exhibit D.—Indenture, John and Wm. Penn et ux., by attorney, to Alexander Wilson, 26 September, 1814.

This indenture, made the twenty-sixth day of September, in the year of our Lord one thousand eight hundred and fourteen, between the honorable John Penn, of Stoke Poges, in the county of Bucks, in the United Kingdom of Great Britain and Ireland, one of the late proprietaries of Pennsylvania, by John R. Coates, of the city of Philadelphia, Esquire, his attorney, duly constituted by letter of attorney, bearing date the twenty-sixth day of March, one thousand eight hundred and four, recorded at Philadelphia, and the honorable William Penn, eldest son and heir at law of Richard Penn, Esquire, deceased, who was the brother and heir at law of John Penn, deceased, the other of the late proprietaries of Pennsylvania, and Juliana Catharine, the wife of him, the said William Penn, by the said John R. Coates, their attorney, constituted by letter of attorney, bearing date the fifth day of March, one thousand eight hundred and twelve, likewise recorded at Philadelphia, of the one part, and Alexander Wilson, of the city of Philadelphia, merchant, of the other part, witnesseth, that the said John Penn and William Penn, and Juliana Catharine, his wife, by their said attorney, for and in consideration of the sum of four thousand dollars, lawful money of the United States, unto the said John R. Coates, for the use of his constituents, at or before the sealing and delivery hereof, by the said Alexander Wilson well and truly paid, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, and confirmed, and by these presents do grant, bargain, and sell, alien, enfeoff, release, and confirm, unto the said Alexander Wilson, and to his heirs and assigns, a certain lot or piece of ground, situate on the southwesterly side of Water street, in the town of Pittsburg, in the county of Alleghany, in Pennsylvania, beginning at the southwest corner of the said Water street and Grant street; thence extending along the southwesterly side of the said Water street north sixty-four degrees west, to a point in a direct line with the northwesterly side of *West* street; thence extending north fifty-seven degrees west, to a point opposite to the southeasterly corner of the lot marked in the general plan of the said town of Pittsburg No. 1; thence extending north forty-five degrees west, to a point opposite the southwesterly corner of the said lot No. 1; thence extending westerly to the confluence of the rivers

Monongahela and Alleghany, at the low water mark thereof; thence extending up the low water mark of the said Monongahela river, the several courses and distances thereof, to Grant street aforesaid; thence along the northwesterly side of the said Grant street north twenty-seven degrees east, to the place of beginning, together with all and singular the ways, waters, watercourses, liberties, privileges, hereditaments, and appurtenances whatsoever, thereunto belonging or in anywise appertaining, and the reversions and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, property, claim, and demand whatsoever, of them, the said John Penn and William Penn, and Juliana Catharine, his wife, in law, equity, or otherwise, howsoever, of, in, and to the same: to have and to hold the said described lot, or piece of ground, hereditaments, and premises, hereby granted, with the appurtenances, unto the said Alexander Wilson, his heirs and assigns, to and for the only proper use and behoof of the said Alexander Wilson, his heirs and assigns, for ever. And the said John Penn and William Penn, for themselves, their heirs, executors, and administrators, do, by their said attorney, covenant, promise, and agree, to and with the said Alexander Wilson, his heirs and assigns, by these presents, that they, the said John Penn and William Penn, and their heirs, the said described lot or piece of ground, hereditaments, and premises, hereby granted, with the appurtenances, unto the said Alexander Wilson, his heirs and assigns, against them, the said John Penn and William Penn, and their heirs, and against all and every other person or persons whatsoever, lawfully claiming or to claim, by, from, or under them, or any of them, shall and will warrant and for ever defend by these presents.

In witness whereof, the said parties have interchangeably set their hands and seals hereunto, dated the day and year first above written.

JOHN PENN. [SEAL.]
WILLIAM PENN. [SEAL.]
JULIANA CATHARINE PENN. [SEAL.]
By their attorney,
JOHN R. COATES. [SEAL.]

Sealed and delivered in the presence of us,
FRED'K BEATES,
PETER HEYLER.

Received the day of the date of the above written indenture, of the above named Alexander Wilson, the sum of four thousand dollars, being the full consideration money above mentioned.

JOHN R. COATES,
For John and William Penn, Esq's.

Witness: FRED'K BEATES.

The 26th day of September, A. D. 1814, before me the subscriber, one of the aldermen of the city of Philadelphia, came the above named John R. Coates, and in his own name, and in the name of his constituents, the said John Penn and William Penn, and Juliana Catharine, his wife, and in due form of law acknowledged the above written indenture to be his act and deed, and the act and deed of his constituents, by him done and executed by letters of attorney said granted for that purpose, and desired the same may be recorded as such. Witness my hand and seal, the day and year aforesaid. JOHN BAKER. [SEAL.]

Recorded April 2d, A. D. 1821.

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ALLEGHANY COUNTY, ss.

I, William Foster, recorder of deeds, &c., in for said county, do certify the foregoing to be a true copy of the record of a deed from John Penn and William Penn et ux., by attorney, to Alexander Wilson, in book C 2, vol. 28, page 213, &c. Given under my hand, and seal of office, at Pittsburg, this 20th day of September, A. D. 1821.

WM. B. FOSTER, *Rec. Alleghany co.*

Deposition of witnesses referred to, and marked F.

In the circuit court of the United States for the eastern district of Pennsylvania, No. 13, April, 1827.

LESSEE *of Samuel S. Howell and John L. Howell*
vs.
JOSEPH BARCLAY, FLORENCE COLTER, & JOHN M. SNOWDEN. } *Ejectment.*

You are hereby notified, that, pursuant to the act of Congress of the 24th September, 1789, deposition of witnesses on the behalf of the plaintiff in the above cause will be taken de bene esse, before me, mayor of the city of Pittsburg, at my office, in Pittsburg, on Wednesday, the 9th of April instant, between the hours of ten in the morning and six in the evening of said day, at which time and place you are required to attend, and to put interrogatories if you think fit. Witness my hand and seal, this 5th April, A. D. 1828.

MAGS. M. MURRAY, [SEAL.]
Mayor city of Pittsburg.

TO JOSEPH BARCLAY, FLORENCE COLTER, JOHN M. SNOWDEN,
Defendants in the above cause, and
NEVILLE B. CRAIG, *their attorney.*

CITY OF PITTSBURG, ss.

David Jewell, constable, on his solemn oath saith, that he served the within rule on Joseph Barclay, Florence Colter, and John M. Snowden, the defendants therein named, by showing them the original, and reading the same, and by leaving in the hands of each of them a true copy of the same this day.

D. JEWELL, *C.*

Sworn and subscribed before me, an alderman of said city, the 7th day of April, 1828.

M. B. LOWRIE, *Ald.*

The within notification was duly served on me,
NEVILLE B. CRAIG, *Att'y for def't.*

PENNSYLVANIA, *city of Pittsburg, ss.*

Deposition of witnesses, taken de bene esse, on behalf of the plaintiffs in a certain case depending and undetermined in the circuit court of the United States for the eastern district of Pennsylvania, No. 13, of April term, 1827, wherein the lessee of Samuel S. Howell and John L. Howell are plaintiffs, and Joseph Barclay, Florence Colter, and John M. Snowden are defendants, before me, Magnus M. Murray, mayor of the city of Pittsburg, at my office, in Pittsburg, on Wednesday, the 9th day of April, A. D. 1828, pursuant to the 30th section of the act of Congress passed the 24th day of September, A. D. 1789, and the annexed notification, the same having been previously duly served on the said defendants.

Aaron Hart, a witness produced on behalf of the plaintiffs, after having been by me carefully examined, and cautioned, and sworn, to testify the whole truth in the cause, and between the parties aforesaid, did testify and depose as follows, to wit:

That deponent saw Joseph Barclay, one of the defendants, working at the lower end of the wharf, on the Monongahela river, at Pittsburg; he thinks it was in the summer of the year 1826, but is not certain. Deponent always understood that the wharf was built by the city. Florence Colter has also been acting as wharf-master for two or three years, and during that period deponent has paid nine wharfage for flat, keel, and steamboats. The rates of wharfage paid were according to an ordinance of the city, and were exacted from boats landing on the beach below the bridge, whether at the wharf or where there is no wharf: the same rates of wharfarge are paid up to the present time. Deponent thinks that John M. Snowden, one of the defendants, was mayor of Pittsburg in the year 1826. Deponent has resided in Pittsburg about thirty years, and knows no other person named Florence Colter but the one he has mentioned above. Deponent cannot say whether wharfage was exacted from boats landing below the wharf or not. Deponent supposes that the wharf extends about three hundred yards, commencing near the lower side of Wood street, and extending down the river to about Ferry street, near low water mark.

In answer to questions put by Neville B. Craig, Esq., counsel for the defendants, deponent saith, that about thirty years ago there was a gulley at the mouth of Wood street, which extended up to Front street, and that boats came up there as far as the bridge in time of high water. Deponent has paid money to have the street continued out towards the river for his own convenience in loading boats.

In answer to a question put by Mr. Baldwin, counsel for the plaintiffs, deponent saith, that he recollects a ferry being kept at the mouth of Liberty street ever since he came to this place, and that there has been a boat yard between Liberty and Penn streets for eight or ten years past, and a boat yard near or at the point for twelve or sixteen years; there has been a fishery at the point for many years, and deponent always understood that rent was paid for it.

AARON HART.

Sworn and subscribed, April 9th, 1828, before

MAGS. M. MURRAY,
Mayor city of Pittsburg.

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Also, William Graham, jr., a witness produced on behalf of the plaintiffs, and having been, as aforesaid, examined, cautioned, and sworn, did testify and depose as follows, to wit:

That he is now, and has been treasurer of the city of Pittsburg since the year 1823. The first part of the wharf on the Monongahela was built by Robert Spencer about twelve years ago: it was built for the borough; additions have since been made by the city. Joseph Barclay, one of the defendants, made an addition in the summer and fall of 1826; the city paid Barclay for it: the city had possession of the wharf from the time it was first built; deponent does not know that they had exclusive possession. Florence Colter is now wharf-master, appointed by the city, and has been for three years past: Mr. Colter pays the wharfage he collects to deponent, as treasurer, and the amount so paid up to 11 of January last is two thousand two hundred and twenty-six dollars and sixty-one cents. Deponent understood that the city had employed counsel to defend this suit; and he, as treasurer, has paid money, which he understood was for that purpose. The money received from Mr. Colter for wharfage has been charged to deponent in his account as treasurer, and the money mentioned above as paid for the purpose of defending this suit has been credited in like manner. John M. Snowden was mayor in the year 1826.

W. GRAHAM, Jr.

Sworn and subscribed, April 9th, 1828, before

MAGS. M. MURRAY,
Mayor city of Pittsburg.

Also, Alexander Johnston, jr., a witness produced on behalf of the plaintiffs, and having been, as aforesaid, examined, cautioned, and sworn, did testify and depose as follows, to wit:

Deponent is now, and has been for six or eight years, president of the common council of the city of Pittsburg. The city councils have employed and paid counsel for defending this suit. Florence Colter is the wharf-master of the city; it is his duty to superintend the wharf and collect wharfage, under the ordinances of the city.

In answer to questions put by N. B. Craig, Esq., counsel for the defendants, deponent saith, that he, this morning, measured the breadth of Water street at different points between West street and Smithfield street; deponent means that part of Water street between the buildings and the break of the bank; and that the annexed statement, signed by deponent, he believes to be substantially correct.

ALEX. JOHNSTON, Jr.

Sworn and subscribed, April 9th, 1828, before

MAGS. M. MURRAY,
Mayor city of Pittsburg.

At a point near the centre of the square between Wood and Smithfield streets, seventy-five feet.

It continues about this breadth to Grand street.

At Wood street, fifty-six feet.

Half way between Wood and Market street, sixty-five feet.

At Market street, forty-one feet.

Half way between Market street and Chancery lane, forty-three feet.

At Chancery lane, forty-seven feet.

Half way between Chancery lane and Ferry street, forty-two feet.
At Ferry street, forty feet.
Half way between Ferry street Redoubt alley, forty-one feet.
At Redoubt alley, forty-four feet.
Half way between Redoubt alley and Short street, thirty-four feet.
At Short street, thirty-two feet.
Half way between Short and West street, eight feet.

ALEX. JOHNSTON, JR.

I do hereby certify that the foregoing depositions of Aaron Hart, William Graham, jr., and Alexander Johnston, jr., were taken by and before me, at my office, in Pittsburg, on Wednesday, the 9th day of April, A. D. 1828, between the hours of ten in the morning and six in the evening of said day, in the presence of Henry Baldwin, Esq., counsel for the plaintiffs, and Neville B. Craig, Esq., counsel for the defendants, were reduced to writing by me, and all in my proper handwriting, except the signatures of the witnesses, which were written by them respectively, in my presence, after the said depositions had been reduced to writing. And I do further certify that all of the above named witnesses reside in the city of Pittsburg, more than one hundred miles from the place of the trial of the said cause, which is the reason for so taking said depositions; and that the annexed notification was duly served on said defendants, and N. B. Craig, Esq., their counsel.

In testimony whereof, I have hereunto set my hand, and caused the seal of said city to be affixed, this 9th day of April, 1828.

MAGS. M. MURRAY, [SEAL.]
Mayor city of Pittsburg.

Deed from John Ormsby and wife to Isaac Gregg, referred to, and marked H.

This indenture, made the fifth day of November, in the year of our Lord one thousand seven hundred and ninety-eight, between John Ormsby, of the township of St. Clair, in the county of Alleghany, and State of Pennsylvania, and Jane, his wife, of the one part, and Isaac Gregg, and Sidney, his wife, of the town of Pittsburg, county and State aforesaid, of the other part, witnesseth, that the said John Ormsby, and Jane, his wife, for and in consideration of the sum of five shillings, lawful money of the State aforesaid, to them in hand paid by the said Isaac Gregg, and Sidney, his wife, the receipt whereof is hereby acknowledged, have, and by these presents do grant, bargain, sell, release, and confirm unto the said Isaac Gregg, and Sidney, his wife, a certain lot of ground, situate in the town of Pittsburg aforesaid, marked in the plan of said town No. 183, bounded by Front street, the river Monongahela, and lots No. 182 and 184, it being the same lot or piece of ground which the honorable John Penn and John Penn, jr., late proprietaries of Pennsylvania, by their indenture, bearing date the second day of October, one thousand seven hundred and eighty-four, did grant and convey unto the said John Ormsby, (party hereto,) and to his heirs and assigns, for ever, together with all and singular the buildings and appurtenances whatsoever thereunto belonging or in any wise appertaining: to have and to hold the said described lot No. 183, hereditaments and premises hereby granted, or mentioned to be granted, with the respective appurtenances, unto them, the said Isaac Gregg, and Sidney, his wife, their heirs and assigns,

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to and for the only proper use, benefit, and behoof of them, the said Isaac Gregg, and Sidney, his wife, their heirs and assigns, for ever.

In witness whereof, the said John Ormsby, and Jane, his wife, have hereunto interchangeably set their hands and seals, the day and year first above written.

JOHN ORMSBY. [SEAL.]
JANE ORMSBY. [SEAL.]

Sealed and delivered in the presence of
THOMAS SILK,
JOSEPH B. ORMSBY.

Received the day of the date of the above written indenture, of the above named Isaac Gregg, and Sidney, his wife, the sum of five shillings, lawful money of Pennsylvania, being the full consideration money above mentioned.

JOHN ORMSBY.

Witness present at signing:
THOMAS SILK,
JOSEPH B. ORMSBY.

ALLEGHANY COUNTY, ss.

Personally appeared before me, the subscriber, one of the justices of the peace in and for said county, Joseph B. Ormsby, one of the subscribing witnesses to the within indenture, and was duly sworn according to law, deposeth and saith, that he was present, and did see John Ormsby, and Jane, his wife, sign, seal, and deliver the within indenture as their act and deed; and that he also saw Thomas Silk subscribe his name as a witness to the execution thereof; and that the name Joseph B. Ormsby, subscribed to the within as a witness, is this deponent's own handwriting.

In testimony whereof, I have hereunto set my hand and seal, the 17th day of November, A. Domini 1798.

JOSEPH B. ORMSBY.

Sworn and subscribed before me, the day above written.

JER'H BARKER.

Recorded the 11th day of January, 1799.

ALLEGHANY COUNTY, ss.

I, Mathew Stewart, recorder of deeds, &c., in and for said county, do hereby certify the foregoing to be a true copy from the records as remains filed in book H, page 414, &c. Given under my hand, and seal of office, at Pittsburg, the 12th day of April, 1828.

For M. Stewart, Recorder,
JAS. H. STEWART. [SEAL.]

Memorandum of agreement between John Penn, jr. and John Penn, and Isaac Craig and Stephen Bayard, dated January 22d, 1784, referred to, and marked I.

Memorandum of agreement made and agreed upon between John Penn, jr. and John Penn, both of the city of Philadelphia, Esquires, of the one part, and Isaac Craig and Stephen Bayard, both of the said city, Esquires, of the other part, as follows: The said John Penn, jr. and John Penn have

this day contracted with and sold to the said Isaac Craig and Stephen Bayard, a certain tract of land, situate in Washington county, and in that part of their manor of Pittsburg that is west of Monongahela, and opposite the junction of that river with the Alleghany, beginning on the bank of the river, twenty-five perches below the place where the old French hospital stood; from thence extending eighty perches up the river; thence extending up the Coal hill fifty-four perches; from thence, parallel with and opposite to the first line, eighty perches; and from thence fifty-four perches, to the place of beginning, containing twenty-five acres, and the usual allowance for a road that is now along the bank of the river. And also a certain other small piece of land, situate in Westmoreland county, in their manor of Pittsburg, and lying and being in a point formed by the junction of the rivers Monongahela and Alleghany, bounded on two sides by the rivers aforesaid, on a third side by the fosse or ditch of fort Pitt, continued from Monongahela to the salient angle of the northeast bastion; and from thence, on the other side, by a ditch cut to the Alleghany, containing about three acres, more or less, with the appurtenances, for such a consideration or sum of money as they, the said John Penn, jr. and John Penn shall, at any time within one year from this time, bona fide, sell the same quantity of their said manor land for, adjoining the said hereby bargained premises respectively, to any person or persons whatsoever. The said Isaac Craig and Stephen Bayard do now pay to the said John Penn, jr. and John Penn, on account of the said bargained premises, the sum of twenty-five pounds, specie of gold and silver, for which a receipt is herein endorsed. The said John Penn, jr. and John Penn do hereby respectively covenant and agree, that within the said one year, by good patent or patents, deed or deeds, to grant and convey the said bargained premises to the said Isaac Craig and Stephen Bayard, their heirs and assigns, in severalty, for ever, as tenants in common, they paying all expenses for writings, and also paying to them, the said John Penn, jr. and John Penn, the remainder of the consideration money which shall then appear to be coming to them for the said bargained premises. The said John Penn, jr. and John Penn do also agree, that the said Isaac Craig and Stephen Bayard shall and may take immediate possession of the said bargained premises, and receive the rents and profits thereof to their own use. For the true performance of all and singular the covenants and agreements aforesaid, the said parties hereto do mutually bind themselves, their heirs, executors, and administrators, each unto the other of them, in the penalty of three hundred pounds, gold and silver money, firmly, by these presents, to be paid by the defective party to the party complying.

In witness whereof, the said parties to these presents have interchangeably set their hands and seals, this twenty-second day of January, in the year of our Lord one thousand seven hundred and eighty-four.

JOHN PENN. [SEAL.]
JOHN PENN. [SEAL.]
ISAAC CRAIG. [SEAL.]
S. BAYARD. [SEAL.]

Sealed and delivered in the presence of us,
MARY ALLEN,
J. CERUAND.

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Received at the time of executing this instrument of writing, of the therein named Isaac Craig and Stephen Bayard, the sum of twenty-five pounds, as therein specified to be paid on account of the bargained land and premises.

JOHN PENN.

Test: MARY ALLEN, J. CERUAND.

And it is further agreed, that Major Isaac Craig and Col. S. Bayard shall have the right of pre-emption to the land included within the glacis and rampart of fort Pitt, with the appurtenances, as soon as the garrison is withdrawn from the place. Feb. 7th, 1784.

JOHN PENN.
JOHN PENN.

Deed John Penn, jr. and John Penn to Isaac Craig and Stephen Bayard, dated Dec. 31, 1784, *referred to, and marked J.*

This indenture, made the thirty-first day of December, in the year of our Lord one thousand seven hundred and eighty-four, between John Penn, jr. and John Penn, of the city of Philadelphia, in the Commonwealth of Pennsylvania, Esquires, late proprietaries of Pennsylvania, of the one part, and Major Isaac Craig and Colonel Stephen Bayard, both of the town of Pittsburg, in the county of Westmoreland, in Pennsylvania aforesaid, of the other part, witnesseth, that the said John Penn, jr. and John Penn, for and in consideration of the sum of four hundred and eleven pounds five shillings, lawful silver money of Pennsylvania, unto them, at or before the sealing and delivery hereof, by the said Isaac Craig and Stephen Bayard well and truly paid, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released, and confirmed, and by these presents have granted, bargained, sold, released, and confirmed, unto the said Isaac Craig and Stephen Bayard, and to their heirs and assigns, thirty-two lots or pieces of ground, situate in a point formed by the junction of the two rivers Monongahela and Alleghany, in the town of Pittsburg aforesaid, marked in the general plan of the said town, made by Colonel Woods, number one, two, three, four, five, six, seven, eight, nine, number ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, one hundred and thirty-two, one hundred and thirty-three, one hundred and thirty-four, one hundred and thirty-five, one hundred and thirty-six, one hundred and thirty-seven, one hundred and thirty eight, one hundred and thirty-nine, one hundred and forty, one hundred and forty-one, one hundred and forty-two, one hundred and forty-three, one hundred and forty-four, one hundred and forty-five, and two hundred and sixty; and which said plan is recorded, or intended to be recorded, in the office for recording of deeds for the county of Westmoreland. The said lots of ground, number one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, are bounded northwardly by the said Alleghany river, eastwardly by Marberry (or Mulberry) street, southwardly by Penn street, and southwestwardly by the said Monongahela river. The said lots of ground, number one hundred and thirty-two, one hundred and thirty-three, one hundred and thirty-four, one hundred and thirty-five, one hundred and thirty-six, one hundred and thirty-seven, one hundred and thirty-eight, one hundred and thirty-nine, one hundred and forty, one hundred and forty-one, one hundred and forty-two, one hundred and forty-three, one hundred and

forty-four, are bounded southwestwardly by the said Monongahela river, northwardly by the said Penn street, eastwardly by the said Marberry street, and southwardly by Liberty street; and the lot of ground, marked number one hundred and forty-five, being bounded southwestwardly by the said Monongahela river, northwestwardly by Liberty street, and northeastwardly by Front street, and southeastwardly by West street; and the lot numbered two hundred and sixty, being bounded northwardly by Liberty street, southeastward by West street, and southwestward by Front street; together with all and singular the rights, members, and appurtenances whatsoever to the said thirty-two lots or pieces of ground hereby granted, severally and respectively thereunto belonging or in anywise appertaining: to have and to hold the said thirty-two lots or pieces of ground, hereditaments and premises hereby granted, or mentioned to be granted, in manner following, that is to say, one full, equal, and undivided moiety or half thereof, with the respective appurtenances, unto the said Isaac Craig, his heirs and assigns, to and for the only proper use and behoof of the said Isaac Craig, his heirs and assigns, for ever; and the other like moiety, or equal and undivided half part thereof, with the respective appurtenances, unto the said Stephen Bayard, his heirs and assigns, to and for the only proper use and behoof of the said Stephen Bayard, his heirs and assigns, for ever.

In witness whereof, the said parties have interchangeably set their hands and seals hereunto, dated the day and year first above written.

JOHN PENN, JR. [SEAL.]
JOHN PENN. [SEAL.]

Sealed and delivered in the presence of us, by the said John Penn,
PETER MILLER.
JEAN LOUIS PATRY.

And sealed and delivered by the said John Penn, jr., in the presence of us,
PETER MILLER,
PETER HIGGINS.

Received the day of the date of the above written indenture, of the above named Isaac Craig and Stephen Bayard, the sum of four hundred and eleven pounds five shillings, specie, being the full consideration money above mentioned.

TENCH FRANCIS,
Attorney for John Penn, jr., and John Penn.

Test: PETER MILLER and G. SIMPSON.

The 1st day of January, A. D. 1785, before me, the honorable Thomas McKean, LL. D. chief justice of the Commonwealth of Pennsylvania, &c., came Peter Miller, of the city of Philadelphia, gentleman, and on his solemn affirmation, according to law, did say, that he was present, and did see the above named John Penn, jr. and John Penn, Esquires, seal, and, as their act and deed, deliver, the above written indenture; that he did see Jean Louis Patry subscribe his name as a witness thereunto; and that the name Peter Miller, thereunto subscribed as a witness, is of his own handwriting. In testimony whereof, I have hereunto set my hand and seal, the day and year aforesaid.

THO. McKEAN. [L. S.]

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WESTMORELAND COUNTY, ss.

I certify the aforegoing to be a true exemplification of a deed recorded in my office, in book A, pages 526, 527.

In witness whereof, I hereunto set my hand, and seal of office, at Greensburg, this twenty-sixth day of December, in the year of our Lord eighteen hundred and twenty-five.

ROBERT MONTGOMERY, *Rec.* [SEAL.]

Patent referred to, and marked K.

John Penn, Thomas Penn, and Richard Penn, Esquires, true and absolute proprietaries and governors in chief of the province of Pennsylvania, and the counties of New Castle, Kent, and Sussex, on Delaware co., all unto whom these presents shall come, send greeting:

Whereas, in and by a certain patent, under the hands of William Markham, Robert Turner, and John Goodson, then commissioners of property, and the lesser seal of our province, bearing date the 12th day of the month of June, in the year of our Lord 1689, a lot of ground or land was granted unto Daniel Smith, situate on and before the bank of Delaware river, in the city (then called the town) of Philadelphia, being in breadth thirty feet, and in length or depth two hundred and fifty feet, bounded on the lot north by the lot of William Bradford, on the east with Delaware river, at the extent of two hundred and fifty feet from the east side of Delaware Front street, on the south with the lot of William Lee, and on the west with the said Front street, to hold to him, his heirs and assigns, for ever, under the quit rent of three English silver shillings, to be paid yearly for and during the term of fifty-one years from the year of our Lord aforesaid, and, at the expiration thereof, that then one-third part of the yearly value of the said lot of ground, with the buildings and improvements which should then be erected and made on the same, should for ever thereafter be paid to our late father, William Penn, Esq., then proprietor and governor in chief of our said province, his heirs and successors; and also under other limitations and provisors in the said patent conditioned and expressed, as in and by the same patent, relation being thereunto had, may fully appear. And whereas, in and by our other patent, from the same commissioners of property, under the lesser seal aforesaid, bearing date the 7th day of March, Anno 1699, a lot of land or ground was granted to William Lee, of the city of Philadelphia aforesaid, situated on and before the bank of Delaware river, in the said city, being in breadth thirty feet, and in length or depth two hundred and fifty feet, bounded on the north with the above described lot, on the east by Delaware river, at the extent of two hundred and fifty feet from the east side of Delaware Front street, on the south with the lot granted to Charles Pickering, and on the west by the Front street aforesaid, to hold to him, *if* said William Lee, his heirs and assigns, for ever, under the quit rent of three English silver shillings, to be yearly paid as aforesaid, and also under the same limitations and provisors as in and by the patent aforesaid (on record) may appear. And whereas, in and by sundry deeds and conveyances since made and executed, the right of and the eastern part of the first described lot, and a piece of the last described lot, lying contiguous on the east side of the thirty feet space of ground reserved in the above recited patents for a public cartway, was called Delaware street, together with the houses, buildings, and wharves erected and made on the same, is now law-

fully vested in Thomas Lawrence, of the city of Philadelphia aforesaid, merchant, at whose instance and request, and by virtue and in pursuance of our warrant under *or* lesser seal, bearing date the 12th day of February last past, the same was re-surveyed, and found to be situate as followeth, to wit: bounded on the west by Delaware st., heretofore called King street, on the north by Benjamin Morgan's lot, on the east by Delaware river, at the extent of two hundred and fifty-feet, to be measured from the east side of the Front street into the said river, and on the south with an alley of the breadth of ten feet, leading from Delaware street into the said river, and being in breadth, on Delaware street and on the river Delaware, thirty-nine feet and a half, in and by the re-survey thereof remaining in the surveyor general's office, as may appear. Now, at the further instance and request of the said Thomas Lawrence, that we would be pleased to release unto him the said third part of the yearly value of those parts of the two several lots of ground hereinbefore described, vested in him, the said Thomas Lawrence, now in his possession as aforesaid, reserved in the manner as in and by the said patents is mentioned and set forth, know ye, that we, the said John Penn, Thomas Penn, and Richard Penn, favoring the request of the said Thomas Lawrence, and for his future encouragement, to build upon and improve the same, and for and in consideration as well of the sum of seventy-nine pounds, lawful money of Pennsylvania, to our use now paid by the said Thomas Lawrence, the receipt thereof we hereby acknowledge, and of the yearly quit rent hereinafter continued and reserved, have granted, remised, and released, and altogether, for us and each of us, our and each of our heirs, executors, and administrators, for ever quit claim unto the said Thomas Lawrence, his heirs, executors, administrators, and assigns, all that the one-third part of the yearly value of those parts of the two several lots of ground hereinbefore described, with all messuages, buildings, houses, wharf, and other improvements whatsoever, being erected, now in possession of the said Thomas Lawrence, and all the estate, right, title, interest, claim, and demand, whatsoever, which the said William Penn, Esq., our father, and which we, the said John Penn, Thomas Penn, and Richard Penn, or any of us, or any other person or persons whatsoever claiming by, from, or under our said father, his heirs or assigns, ever had, now have, or hereafter may have, or claim, of, in, or to the said one-third part of the yearly value so reserved as aforesaid, to issue out of the last described pieces or parts of the first mentioned lot of ground, or any part thereof: to have and to hold the before described piece of ground and premises, with the appurtenances, being parts of the first mentioned lots of ground, and being in length, running into the river Delaware from the east side of the said Delaware street, to the extent of two hundred and fifty feet, to be measured from the east side of the Front st. as aforesaid, and in breadth thirty-nine feet and a half, and bounded as aforesaid, with all singular the houses, buildings, keys, wharves, warehouses, ways, passages, waters, watercourses, lights, easements, liberties, privileges, advantages, hereditaments, and appurtenances whatsoever, thereunto belonging or in anywise appertaining, unto the said Thomas Lawrence, his heirs and assigns, to the use and behoof of the said Thomas Lawrence, his heirs and assigns, for ever, to be holden of us, our heirs and successors, proprietaries of Pennsylvania, under all and singular the conditions, limitations, and provisos, in the first recited patents mentioned and contained; the said third part of the yearly value aforesaid hereby released, or intended to be hereby released, only excepted, so as neither

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we, the said John Penn, Thomas Penn, and Richard ~~Penn~~, or any of us, our or either of our heirs, executors, administrators, or assigns, or any other person or persons whatsoever, in our name or names, right or rights, or in the right of our said father, William Penn, Esq.. shall or may at any time hereafter have, claim, challenge, or demand, any estate, right, title, or interest, of, in, or to the said last described lot or piece of ground, or of the third part of the yearly value of the same ground and premises, or to any part thereof, but of and from all estate, right, title, interest, of, in, or to the premises, or any part thereof, the quit rent hereinafter mentioned and reserved only expressed, shall for ever hereafter be barred and excluded by these presents, yielding and paying therefor, nevertheless, yearly to us, our heirs, and successors, at the city of Philadelphia, at or upon the first day of March, in every year, from and after the date hereof, two English silver shillings, or value of the same in coin, current according as the exchange shall then be between our said province and the city of London, to such person or persons as shall, from time to time, be appointed, to receive the same; and in case of non-payment thereof within ninety days next after the same shall become due, then it shall and may be lawful for us, our heirs, and successors, our and their receiver or receivers, into and upon the hereby granted lot and premises to re-enter, and the same to hold and possess, until the said quit rent, and all arrears thereof, together with the charges of , accruing by means of such non-payment and re-entry aforesaid, be fully paid and discharged.

In witness whereof, the said John Penn, Thomas Penn, in our own right, and by authority from the said Richard Penn, have caused the great seal of our province to be hereunto affixed, at Philadelphia, this twenty-seventh day of June, in the year of our Lord one thousand seven hundred and thirty, in the ninth year of the reign of King George the second over Great Britain, and the seventeenth year of our government.

[L. S.]

JOHN PENN.
THOMAS PENN.

Entered in the office for recording of deeds for the city and county of Philadelphia, Com. Book A, vol. 1, page 118, &c., the 7th day of October, 1738, by me,

C. BROCKDEN, *Recorder.*

Endorsed: June 27, 1735. Patent to Thomas Lawrence, Esq., for one-third part of a water lot, containing, in breadth, 39½ feet, in the city of Philadelphia. Ent. recorded.

True copy from the original. Philadelphia, Dec. 18th, 1830.

SAUNDERS COATES.

Deposition of Samuel Ewalt.

LESSEE *of Richard W. Howell,*
vs.
BARCLAY, COLTER, and SNOWDEN. } *Circuit court.*

Same plaintiffs,
vs.
Same defendants. } *Same court.*

Samuel Ewalt, of the county of Alleghany, farmer, aged seventy years and upwards, a witness produced, sworn, and examined, on the part of the defendants, says:

In the year 1784, in the month of May or June, Mr. Woods came to Pittsburg, and I waited on him, being an old acquaintance. He informed me that he came to Pittsburg to lay out the town for Mr. Penn. I asked him when he would commence; his answer was to-morrow. I then inquired where he would begin; he said at my house, he thought the most central in the town As I returned home I saw a number of the citizens, and stated to them the object of Mr. Wood's visit. The day following, Mr. Woods and Mr. Vickroy came to my house; Mr. Vickroy stuck his Jacob staff close by the logs of my house, which threw my house about seven or eight feet into what is now marked street. I remonstrated with Mr. Woods, and said if I was obliged to take it down it would injure me very much, and we had a good deal of conversation about it. Mr. Woods replied he did not wish to injure me, and would comply with my request; he made a mark on the end of the log, and desired Mr. Vickroy to stick his Jacob's staff right opposite that mark. When he (Vickroy) was taking his sight, I remarked to Mr. Woods, who was standing by him, that Water street was quite too narrow; immediately the persons who were assembled to see the work begun, cried out that it was too narrow, and that it should be wider. They seemed to be a little irritated. Mr. Woods addressed the whole of us generally, and said, gentlemen, these houses will not remain or stand very long; you will build new houses, and dig cellars, and bank out Water street as wide till it comes to low water mark if you please. I then observed, it is possible we may be deprived of water He observed, that that street, to low water mark, should be for the use of the citizens and the public for ever; and that reconciled the people to it: and the sight was taken, and the work proceeded in. In some places the road was very narrow: there was one place near my house where it was washed, that there was hardly room for a cart or a wagon to pass: sundry people had tumbled into the gully: I did not proceed farther with them in their survey; the crowd went with them, but I did not: there were one or two narrow places some distance lower down. I knew Mr. George Woods from the time I was fourteen or fifteen years of age. At one time I lived in Bedford county, within about a mile and a half of the place of Mr. Woods's residence.

Being cross-examined, the deponent says: I owned two lots at the corner of Market and Water streets, the whole front of which is covered with brick buildings: the lots are let out on ground rent. If I may venture to give an opinion, I think if Mr. Woods were alive this litigation would never have taken place, because he would explain it to your satisfaction. I do not recollect what I said at the former trial, but I suppose if it was not the same words it is the same import. I certainly claimed the privilege of going to low water mark with other citizens; it was public ground and I claimed the right. I don't know that I had any other claim or right than that of passing backwards and forwards over it. I don't recollect saying, at the former trial. that I considered it as much my property as the lots themselves, and if I did so, I might have been mistaken. I certainly would not have been willing that any person should have set up a ferry directly opposite my door without my consent and approbation. It is very possible I might have once thought that no person could have had a right to a wharf or landing in front of my lots without my approbation, but I don't think so now; I have altered my opinion since the place was laid out and the law put in force. When I first went to that place there was no civil law there; by the law, I mean the law of Pennsylvania. I claimed it to low water mark, to have the use and privilege of it in common with every other per-

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son: I did not, as I know of, claim any other right or privilege: I claimed no other that I know of than every other inhabitant of the town. Had any person attempted to build or take possession between my lots and the water I certainly would have objected to it. Being asked whether he would have objected on account of his own individual rights or those of the public, he answers, I certainly should have objected to any person coming on my property. I once considered that it was my property, but as it was given up to the public, I no longer did, except as a right to go over it as one of the public. I never gave up my rights to the public. From the language of Mr. Woods, it was plain that every person having land on the street would have right and privilege down to low water mark; the right and privilege of doing any thing they please, coming and going, and going backwards and forwards. Being asked what rights and privileges other people had, he answers, I don't know; I suppose they had the right of going over as a street. I don't know that any person had the right or privilege of making landings and ferries without they applied to the court. I don't know as to the court, I may be mistaken as to that: acts of Assembly were obtained by Bousman and others in other places. I do not know when I first heard of the claim of the Penns to this ground. I thought, at the time Mr. Woods laid out the town, he extinguished all the right and title of the Penns, and gave it to the individuals, to the claimants that had lots: the whole that had lots were to have the preference, those on Water street as well as the rest; I mean every one that claimed by pre-emption, on the bank of the river and throughout the town. I thought that every person of the public had a right to occupy that ground long before I heard of this Philadelphia claim. I did not collect any persons to oppose Mr. Woods if he did not make Market street wider, and I never had an idea of the kind. I don't know that I would have opposed him if he had refused to make Market street wider. I don't recollect saying, at a former trial, that every person could establish a ferry opposite their own property; it is possible I might. I heard of no intended opposition to Mr. Woods. I can't tell whether it would make any difference in the value of the property which belonged to me, whether the plaintiff in this case recovers or not. Some part of that which I rented out, a very small part, reverted to me for want of payment of the rent, but the tenants have a right to redeem it. I pay taxes on that which was returned to me and is now in my possession; it consists of two houses.

Being again examined for the defendants: I once supposed that I had a right to build upon the ground below the road, but after Mr. Woods was there I entertained no such idea; I mean upon the ground in front of my lots.

Again cross-examined, he says: There is a wharf erected on the Monongahela river at the mouth of Market street, which extends above and below Market street. I can't tell whether it is a public or private wharf; I have seen the public on it—every body. SAML. EWALT.

Sworn and subscribed this fifth day of November, 1827, before me.
JOHN BINNS, *Ald.*

Taken de bene esse, November 3 and 5.

CH. CHANCERY,
HENRY BALDWIN,
For plaintiff.
JOSEPH HOPKINSON,
J. R. INGERSOLL,
For defendants.

Commission to take the deposition of witnesses on the part of the defendants.

In the circuit court of the United States in and for the district of Pennsylvania, in the third circuit.

RICHARD SMITH, *a citizen of the State of New Jersey, lessee of Richard W. Howell, a citizen of the same State,*
vs
JOSEPH BARCLAY, FLORENCE COLTER, and JOHN M. SNOWDEN. } *Ejectment.*

The President of the United States to William P. Fleming, at Flemingsburg, Fleming county, in the State of Kentucky, commissioner nominated on the part and behalf of the defendants in the above cause, greeting:

Know you, that, in confidence of your prudence and integrity, we have given unto you, and by these presents do give unto you, full power and authority, in pursuance of a rule lately made in the circuit court of the United States in and for the district of Pennsylvania, in the third circuit, in a certain action of trespass and ejectment therein depending, wherein the said Richard Smith, lessee of Richard W. Howell, is the plaintiff, and the said Joseph Barclay, Florence Colter, and John M. Snowden, are the defendants, to call before you, at a certain day and place by you for that purpose to be appointed, all and every person and persons who may be named to you by the said defendants, as witnesses in the said action, and then and there to examine them, on their respective oaths and affirmations, on certain interrogatories hereunto annexed, touching the premises, and to reduce their testimony to writing; and when you shall have so done, you are to send the same to the said circuit court, closed up, and under your seals plainly and distinctly set, together with this writ.

Witness the honorable John Marshall, chief justice of the Supreme Court of the United States, at Philadelphia, this twelfth day of November, A. D. 1827, and in the fifty-second year of the independence of the said United States.

D. CALDWELL, *Clerk C. C.* [L. S.]

Endorsed: The execution of this commission appears in a certain schedule hereto annexed.

Given under my hand and seal, this 10th September, 1828.

WILLIAM P. FLEMING. [SEAL.]

Interrogatories attached to commission.

LESSEE *of Richard W. Howell,*
vs.
JOSEPH BARCLAY, and others, *lessee of Samuel W. Howell and John L. Howell,*
vs.
JOSEPH BARCLAY and others. } *Circuit court of the United States, third circuit, in and for the district of Pennsylvania.*

Interrogatories for witnesses who may be produced and examined on the part of the defendants.

1. Did you know the parties above named, or either of them? and how long have you been acquainted with them, or either of them?

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2. Were you or were you not present at the laying out of the town of Pittsburg? If so, at what time did it take place; who were present; how did it happen that you were there? Relate at large, as fully as your memory will enable you to do, the circumstances that occurred, and the conversation that took place among the persons engaged in the transaction. Did you or did you not hear any conversation between Colonel Woods and the inhabitants, or any of them, relative to the width of Water street, and what was that conversation? State fully and at large.

3. What limits were given to Water street at the time of laying out the town of Pittsburg? State what was to be its boundary on the one side and the other, and whether any mark was made or talked of, on the lower side, except the river.

4. Do you know any thing further that may be material to the defendants? If so, state the same fully and at large, as if you had been more particularly interrogated in relation thereto.

JOS. HOPKINSON,
J. R. INGERSOLL,
For defendants.

December 10, 1827.

A true copy: D. CALDWELL, *Clk. C. C.*

Commission issued ex parte defendants according to rule.

D. CALDWELL, *Clerk Circuit.*

Deposition of John Finley, attached to commission.

In the circuit court United States in and for the district of Pennsylvania, in the third circuit.

RICHARD SMITH, *lessee of Richard W. Howell,*
vs.
JOSEPH BARCLAY, FLORENCE COULTER, and JOHN M. SNOWDEN. } *In ejectment.*

Deposition of witnesses produced, sworn, and examined, on this 10th day of September, in the year of our Lord one thousand eight hundred and twenty eight, at my office, in the town of Flemingsburg, county of Fleming, and State of Kentucky, by virtue of a commission issued out of the clerk's office of the circuit court of the United States in and for the district of Pennsylvania, in the third circuit, to me, William P. Fleming, directed, for examination of witnesses in a certain cause therein depending and had between Richard Smith, lessee of Richard W. Howell, plaintiff, and John Barclay, Florence Coulter, and John M. Snowden, are defendants; and John Finley, aged eighty years and upwards, being produced, sworn, and examined, on the part of the said Joseph Barclay and others, in the title of these depositions named, residing in the said county of Fleming, and Commonwealth of Kentucky, deposeth as follows:

To the 1st interrogatory the deponent saith, that he hath no acquaintance with Richard Smith or Richard W. Howell; that about years 1814 or 1815 he became acquainted with Joseph Barclay, and *have* known ever since. He, about same time, knew of such men as Florence Coulter, and John M. Snowden, but had no personal acquaintance with them.

To the second interrogatory the deponent saith, that he was present when Colonel Woods laid out the town of Pittsburg; that it took place some time

after the close of the revolutionary war; the time he cannot positively state, but, to the best of his recollection, thinks it was between the years 1788 and 1790. There was a number of persons present when it took place; among them he recollects Devaux Smith, Samuel Semple, David Duncan, Samuel Grant, John Ormsby; there were many others not now recollected: the great majority of the then citizens of said town being present with said Wood at various times during his laying out said town, and the survey was executed and the plat of said town made by a Mr. Vickery, under the immediate superintendence of Colonel Woods.

This deponent was living in the town of Pittsburg at that time, and boarded with Mr. David Duncan of said town, where Colonel Woods and said Vickery boarded while engaged in laying out said town; and this deponent then having some claims to lots in said town, he felt interested, and it induced him to pay attention thereto, and he was with him the *grantee* part of the time he was employed in laying out said town. Colonel Wood, after he arrived at Pittsburg, convened the principal inhabitants of said town, and made known his business, and requested their assistance and concurrence. This deponent can't now detail all the conversations which took place at that time, but he recollects that Colonel Woods was requested to extend the width of Market street and of Water street, who refused, and said he would not change the old military plan of said town, but remarked that Water street should be left open to the river's edge at low water mark, for the use of said town; that they, the citizens, might use the same as landings, build walls, make wharfs, or plant trees, at their pleasure; and these conversations were repeatedly made use of by Colonel Woods in the presence of this deponent, and divers other citizens of said town, during the time he was engaged in surveying and laying out said town. Water street, at the time Colonel Woods laid out said town, very narrow in several places, particularly opposite where said Duncan lived, (where Woods boarded,) Chancery lane, and at Ferry street, and at the redoubt below Ferry street, so that it was difficult for a wagon to pass along the same; he objected to extending the width of either street because it would vary the old plan, and interfere with the then buildings on said streets. The width of Water street was to be regulated by a line on the bank immediately in front of the buildings, and extending to the river's edge at low water mark, leaving those who should or did own the property on said Water street to extend it by building walls if they should choose to do so.

In answer to the third interrogatory the deponent saith, that he refers to his answer to the 2d so far as answered; but he again states that the limits given to Water street was a line ran immediately in front of the buildings on the top of the bank on the upper side, and on the lower side the river's edge at low water mark, and was of unequal width at various places, and no other mark was talked of on the lower side of Water street than the river's edge at low water mark; and Water street was thus laid out from the mouth of the Alleghany river up the Monongahela river to Grant street, be its width great or small. The lots adjacent to the Alleghany river were laid off in same way, extending to the river's edge; and when Colonel Woods had laid off Water street, he then continued laying out said town as far as Liberty street, agreeably to the old military plan. This street he made wider, being outside of the old military . Colonel Woods and Mr. Vickery remained until they completed laying out said town, and boarded at the same house with this deponent during their whole stay; and while there, Mr. Vickery made

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out a plan or plat of said town; which said plan or plat, in the handwriting of said Vickery, is now before this deponent, on the back of which he hath written his name, "April 19, 1828;" which said plat of said town of Pittsburg he hath frequently seen heretofore, and examined same, and believes the same to be correct; and he now refers to it, and makes it a part of this his deposition.

In answer to the 4th interrogatory the deponent saith, he knoweth not.

And further this deponent saith not.

JOHN FINLEY.

Cost of witness, $2.

Commissioners' fee to be taxed by court, and fees paid by defendants.

FLEMING COUNTY, STATE OF KENTUCKY.

The foregoing deposition of Major John Finley was this day taken before me, William P. Fleming, at my office, in town of Flemingsburg, and county and State aforesaid, the said Finley, being a resident of said county and State, having administered to him upon his first appearance the following oath, viz: "You are true answers to make to all such questions as shall be asked you upon these interrogatories, without favor or affection to either party, and therein you shall speak the truth, the whole truth, and nothing but the truth, so help you God." Virtue of the annexed commission from the circuit court for the district of Pennsylvania, and third circuit, it being one of the courts of United States, as appears in the annexed deposition; it was wholly written by myself in presence of said witness, he being first duly sworn as aforesaid; and I do hereby certify that I am not of counsel for either party. The plat referred to in said deposition of Major John Finley is hereto annexed, with his name written on the back thereof, as stated in the body of his deposition, and subscribed by him in my presence.

Given under my hand and seal, at Flemingsburg, this 10th Sept., 1828.

WILLIAM P. FLEMING. [SEAL.]

Deed from John Penn, jr. and John Penn, Esquires, to Thomas McKean, Esq., March 16, 1785, *referred to, and marked O.*

This indenture, made the sixteenth day of March, in the year of our Lord one thousand seven hundred and eighty-five, between John Penn, jun. and John Penn, both of the city of Philadelphia, in the Commonwealth of Pennsylvania, Esquires, late proprietaries of Pennsylvania, of the one part, and the honorable Thomas McKean, Esquire, of the said city, LL. D. chief judge of the State of Pennsylvania, of the other part, witnesseth, that the said John Penn, jun. and John Penn, for and in consideration of the sum of twenty-two pounds ten shillings, lawful money of Pennsylvania, in specie, unto them, at or immediately before the sealing and delivery hereof, by the said Thomas McKean well and truly paid, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released, and confirmed, and by these presents do grant, bargain, sell, release, and confirm, unto the said Thomas McKean, and to his heirs and assigns, two certain contiguous lots or pieces of ground, situate in the town of Pittsburg, in the county of Westmoreland, in Pennsylvania aforesaid, marked in Colonel Woods's general plan of the said town No. 187 and 188, containing in the whole, in breadth, one hundred and twenty feet, and in length or depth one hundred and sixty-nine feet, bounded southwestwardly by Water street, southeastwardly by lot No. 189, northeastwardly by Front street, and northwestwardly by Wood

street; together with all the ways, waters, watercourses, rights, members, and appurtenances whatsoever, thereunto belonging or in anywise appertaining, and the reversions, remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, use, possession, property, claim, and demand whatsoever, of them, the said John Penn, jun. and John Penn, and their heirs, of, in, and to the hereby granted, or mentioned to be granted, premises: to have and to hold the said described contiguous lots or pieces of ground, hereditaments, and premises, hereby granted, or mentioned to be granted, with their respective appurtenances, unto the said Thomas McKean, his heirs and assigns, to and for the only proper use and behoof of the said Thomas McKean, his heirs and assigns, for ever. And the said John Penn, jr. and John Penn, for themselves and their heirs, do covenant, promise, and grant, to and with the said Thomas McKean, his heirs and assigns, by these presents, in manner following, that is to say, that they, the said John Penn, jr. and John Penn, and their heirs, the said described two contiguous lots or pieces of ground, hereditaments, and premises, hereby granted, or mentioned to be granted, with their respective appurtenances, unto the said Thomas McKean, his heirs and assigns, against them, the said John Penn, jr. and John Penn, and their heirs, of, in, and to the hereby granted or mentioned to be granted premises, to have and to hold the said described contiguous lots or pieces of ground, hereditaments, and premises, hereby granted, or mentioned to be granted, with their respective appurtenances, unto the said Thomas McKean, his heirs and assigns, to and for the only proper use and behoof of the said Thomas McKean, his heirs and assigns, for ever. And the said John Penn, jr. and John Penn, for themselves and their heirs, do covenant, promise, and grant, to and with the said Thomas McKean, his heirs and assigns, by these presents, in manner following, that is to say, that they, the said John Penn, jr. and John Penn, and their heirs, the said described two contiguous lots or pieces of ground, hereditaments, and premises, hereby granted, or mentioned to be granted, with their respective appurtenances, unto the Thomas McKean, his heirs and assigns, against them, the said John Penn, jr. and John Penn, and their heirs, and against all and every other person and persons whatsoever, lawfully claiming or to claim, by, from, or under them, or any of the late proprietaries, shall and will warrant and for ever defend by these presents.

In witness whereof, the said parties have interchangeably set their hands and seals hereunto, dated the day and year first above written.

JOHN PENN, JR. [SEAL.]
JOHN PENN, [SEAL.]

Sealed and delivered in the presence of us,
PETER Z. LLOYD,
PETER MILLER.

Received the day of the date of the above written indenture, of the above named Thomas McKean, Esquire, the sum of twenty-two pounds ten shillings, in specie, being the full consideration money above mentioned.

Test: TENCH FRANCIS,
Attorney for John Penn, jr. and John Penn.

Be it remembered, that, on the sixteenth day of March, A. D. 1785, before George Bryan, Esquire, one of the judges of the supreme court of the Commonwealth of Pennsylvania, came Peter Miller, of the city of Phila-

delphia, gent., and upon his solemn affirmation, according to law, did say that he was present, and did see John Penn jr. and John Penn, Esquires, seal, and as their act and deed deliver, the above written indenture, and that he did see Peter Zachary Lloyd subscribe his name as witness to the execution thereof, and that the name Peter Miller, also subscribed as witness to the execution of the same, is of his own handwriting.

In witness whereof, I have hereunto set my hand and seal, the day and year aforesaid.

GEORGE BRYAN. [L. S.]

WESTMORELAND COUNTY.

Recorded in the office for recording deeds, &c., in and for the county of Westmoreland, in book B, page 3.

Witness my hand, and seal of office, the 21st day of January, 1786.

MOSES FORD, [L S.]

For James Kinkead, Esquire, recorder.

[For plat, see original.]

Seven other deeds from John Penn and John Penn, jr., to different persons, referring to "Colonel Wood's general map," and four of them calling for Water street as their southwestward boundary; all dated in the year, 1785 and 1786.

BENJ. TILGHMAN, *for pl'ff.*
J. R. INGERSOLL, *for def't.*

Mortgage, Alexander Wilson to John Penn and Wm. Penn, dated September 26, 1814, referred to, and marked P.

This indenture, made the twenty sixth day of September, in the year of our Lord one thousand eight hundred and fourteen, between Alexander Wilson, of the city of Philadelphia of the one part, and John Penn, Esq., one of the proprietaries of Pennsylvania, and William Penn, of the other part. Whereas the said Alexander Wilson, in and by a certain obligation or writing obligatory, under his hand and seal duly executed, bearing even date herewith, standeth bound unto the said John Penn and William Penn in the sum of eight thousand dollars, lawful silver money of the United States, conditioned for the payment of four thousand dollars, lawful silver money as aforesaid, on demand, without fraud or further delay, as in and by said recited obligation and condition thereof, relation being thereunto had, will more fully and at large appear. Now this indenture witnesseth, that the said Alexander Wilson, as well for and in consideration of the aforesaid debt or sum of four thousand dollars, lawful silver money aforesaid, and for the better securing the payment of the same, with interest unto the said John Penn and William Penn, their executors, administrators, and assigns, in discharge of the said recited obligation, as for and in consideration of the further sum of one dollar, unto him in hand well and truly paid by the said John Penn and William Penn, at and before the ensealing and delivery hereof, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, enfeoffed, released, and confirmed, and by these presents doth grant, bargain, sell, alien, enfeoff, release, and confirm, unto the said Penn and William Penn, and to their heirs and assigns, a certain lot or piece of ground situate on the southwestwardly side of Water street, in the town of Pittsburg, in the borough of Pittsburg, in the county of Alleghany, in Penn-

sylvania, beginning at the southwest corner of the said Water street and Grant street; thence extending along the southwesterly side of the said Water street sixty-four degrees west to a point in a straight line with the northwestwardly side of West street; thence extending north fifty-seven degrees west to a point opposite to the southwestwardly corner of the lot marked in the general plan of the town of Pittsburg No. 1; thence extending north forty-five degrees west to a point opposite to the southwestwardly corner of said lot No. 1; thence extending westerly to the confluence of the river Monongahela and Alleghany, at the low water mark thereof; thence extending up the low water mark of the said Monongahela rivers, the several courses and distances thereof, to Grant street aforesaid; thence along the northwestwardly side of the said Grant street north twenty-seven degrees east, to the place of beginning; (being the same premises which the said John Penn and William Penn, and Juliana Catherine, his wife, by their attorney, by indenture bearing date the even herewith, and executed immediately before these presents for the consideration therein mentioned, the whole whereof is hereby secured, granted, conveyed unto the said Alexander Wilson in fee;) together with all and singular the ways, waters, watercourses, rights, liberties, privileges, improvements, hereditaments, and appurtenances, whatsoever, thereunto belonging or in anywise appertaining, and the reversions, and remainders, rents, issues, and profits thereof: to have and to hold the said described lot or piece of ground, hereditaments, and premises, hereby granted, or mentioned or intended so to be, with the appurtenances, and every part thereof, unto the said John Penn and William Penn, their heirs and assigns, to the only proper use, benefit, and behoof of the said John Penn and William Penn, their heirs and assigns, for ever: provided, always, nevertheless, that if the said Alexander Wilson, his heirs, executors, administrators, or assigns, do and shall well and truly pay or cause to be paid unto the said John and William Penn, their executors, administrators, or assigns, the aforesaid debt or sum of four thousand dollars, lawful silver money aforesaid, on the day and time hereinbefore mentioned and appointed for the payment thereof, together with lawful interest as aforesaid, without any fraud or further delay, and witho t any deduction, defalcation, or abatement to be made of any thing for or in respect of any taxes, charges, or assessments whatsoever, that then and from thenceforth, as well this present indenture, and the estate hereby granted, as the said recited obligation, shall cease, determine, and become absolutely null and void to all intents and purposes, any thing herein contained to the contrary in anywise notwithstanding.

In witness, the said parties to these presents have interchangeably set their hands and seals, dated the day and year first above written.

A. WILSON. [L. S.]

Sealed and delivered in the presence of us,
JACOB BAKER,
ANDW. A. STEVENSON.

On the 12th day of July, A. D. 1817, before me, the subscriber, one of the aldermen of the city of Philadelphia, came and appeared Alexander Wilson within named, who acknowledged the within written indenture to be his act and deed, and desired that the same might be recorded as such.

Witness my hand and seal.

JACOB BAKER, *Ald.* [L. S.]

Recorded 19th day of July, 1817.

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ALLEGHANY COUNTY, ss.

I, M. Stewart, Esquire, recorder in and for said county, do hereby certify the foregoing to be a true transcript from the records in my office.

Given under my hand, and seal of office, at Pittsburg, this 11th day of October, A. D. 1827.

M. STEWART, *Recorder.* [L. S.]

Deposition of James Ross.

In circuit court of the United States for Pennsylvania, of May term, 1827, No.

RICHARD SMITH, *lessee of Richard W. Howell, a citizen of the State of New Jersey,*

vs

WILLIAM STILES, *with notice to John M. Snowden, Esquire, Mayor, Joseph Barclay and Florence Colter, tenants in possession.*

To the defendants above named, or N. B. Craig, of their solicitor:

Take notice, that James Ross, Esquire, residing at a greater distance from Philadelphia, where the above cause is to be tried, than one hundred miles, and his testimony being, as I am informed, material for the plaintiff, that, therefore, the deposition of the said James Ross will be taken de bene esse, before me, at my office, in the city of Pittsburg, on Tuesday, the 18th day of April instant, between the hours of 10 o'clock A. M. and 1 o'clock P. M. of the said day, when and where ye may attend, and put interrogatories if ye think fit.

Witness my hand and seal, this 14th day of April, A. D. 1828, at the city of Pittsburg aforesaid.

MAGS. M. MURRAY, [SEAL.]
Mayor city of Pittsburg.

PENNSYLVANIA, *city of Pittsburg, sct.*

Deposition of James Ross, Esquire, taken de bene esse on behalf of the plaintiff, in a certain case depending and undetermined in the circuit court of the United States for the eastern district of Pennsylvania, No. 12, of April term, 1827, wherein the lessee of Richard W. Howell, a citizen of the State of New Jersey, is plaintiff, and William Stiles, with notice to John M. Snowden, Esquire, mayor, Joseph Barclay, and Florence Colter, tenants in possession, are defendants, before me, Magnus M. Murray, mayor of the city of Pittsburg, at my office, in the city of Pittsburg, on Friday, the 18th day of April, 1828, between the hours of 10 o'clock A. M. and 3 o'clock P. M., pursuant to the 30th section of the act of Congress passed the 24th day of September, 1789, and the annexed notification, the same having been previously duly served on the said defendants. The said James Ross, after having been by me carefully examined, and sworn, and cautioned, to testify the whole truth in the cause and between the parties aforesaid, did testify and depose as follows, to wit: That he has not in his possession the original deeds, from the Messrs. Penns to John Ormsby, for lots No. 151 and No. 183, in the city of Pittsburg; that he has no recollection of having ever had them; and that since he was subpœnaed as a witness in this case, he has searched diligently for them, but without success. Deponent thinks that

these deeds were produced in evidence at the trial of this cause before Judge Walker. Deponent cannot say with any certainty what were the precise words of the deeds, the estate they conveyed, nor the ground they described. The purpose for which they were produced at the trial was to show that they conveyed an interest in the ground in front of the lots between the northeastern side of Water street and low water mark in the Monongahela river. Deponent is persuaded that the deeds are recorded either in Alleghany or Washington county. Deponent believes that the deeds were produced by the plaintiff at that trial. Samuel Ewalt was examined as a witness on behalf of the defendants. Deponent had full notes of all the testimony not taken by himself, but on his side of the question; those notes are not now in his possession, nor can he find them, although he has searched carefully for them; he has a distinct recollection that after the trial Judge Walker sent for those notes, and that he sent them to him, and has never since seen them. At the request of deponent, the papers of Judge Walker have been searched for these notes, but without success. During that trial, and all trials of moment in which deponent is engaged, brief memoranda and notes of the testimony, and of objections and authorities adduced in court, were made by deponent, and others concerned on the same side with him, and after the adjournment were put into better form, and placed on the general notes of the trial. Some of these loose memoranda deponent had preserved, and he delivered them, together with all other papers relative to the trial, to Mr. Biddle and Mr. Craig, who are counsel for the defendants in the present suit; and as his notes in the former trial could not be found, he prepared from recollection a statement of the merits of that trial, and the questions that had been raised and discussed during its progress, which he delivered to Mr. Biddle, and has never since seen. Deponent is far from believing that he can recollect the precise words used by Mr. Ewalt, in giving his testimony at that trial; but he does recollect that, in his testimony, he stated the declarations of Colonel Woods to himself and others publicly; that he left open all the space between the northeast side of Water street and the river, that the inhabitants might fill it up, and make it of what breadth they pleased, and might make wharfs on it; and, as deponent thinks, he said they might make warehouses on it in front of their own lots. Deponent recollects well that Mr. Baldwin copied that expression, and made use of it on the trial against the defendants. Mr. Ewalt said that he was present at the laying out of the town by Colonel Woods, and that he had claims to ground in another part of the plat, remote from the end of Market street. Mr. Ewalt stated that these declarations were made by Colonel Woods whilst he was laying out the town, and at a time when the inhabitants had assembled to urge him to make Water street wider than he was then laying it out. Deponent recollects nothing else material, unless it should be brought to his mind by further examination.

On his cross examination by N. B. Craig, Esquire, counsel for the defendants, this deponent further states, that he has known Pittsburg ever since July, 1781; that at Christmas, 1784, being then in the practice of the law, he became acquainted with the condition of property in Pittsburg, and has been intimately conversant with it ever since; he has also well known Col. Woods, who was his father-in-law, Mr. Tench Francis, Mr. Anthony Butler, Mr. Edward Physick, John R. Coates, and General Thomas Cadwallader, all of whom had a care or agency relative to the disposal of the manor of Pittsburg. He never heard any of the agents, nor any other per-

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son on behalf of the proprietors, setting up any claim or title to property between Water street and the river until the spring of the year 1815, when he was informed that Alexander Wilson had made a purchase from the agent of the proprietors of the title that is now in controversy. From the year 1784 to 1815 John Woods resided in Pittsburg, and during all that time was the counsel, and had the care of the interests of the proprietors committed to him by all their successive agents throughout the manor of Pittsburg, and the manor of Brush creek, in Westmoreland county. Deponent never heard him speak of any title or claim to the property now in controversy, nor did he ever hear from any agent of any other limit to Water street than the river. At the close of the year 1784, Water street was very narrow in many places, particularly at the end of West street, Ferry street, Chancery lane, and Market street; throughout that distance the inhabitants have made the street wider from time to time. From Wood street to Grant street deponent thinks the bank was fallen away, and the street is not so wide as it was in 1784. In the year 1784 the bank of the Alleghany river extended more than ten perches further north than it does at present, perhaps not quite so much as ten; the river then generally rose over its bank in the spring freshet of every year. Deponent never heard any agent of the proprietors speak of a street having been laid out along the Alleghany river, but Gen. John Woods, their counsel, always affirmed the contrary. The distance from Penn street to the ground subject to be overflowed, does not exceed, in many places, one hundred and fifty feet, and in no place exceeds two hundred and fifty: this low ground extends from Washington street to the Point. Deponent has known Mr. Ewalt ever since he commenced the practice of the law in 1784: Mr. Ewalt has always been respected as a man of great probity, truth, and integrity; he has been the sheriff of this county, he has represented it in the General Assembly, and for many years was brigade inspector. The ground above Grant street, in 1784, was enclosed in a field.

Being again examined by W. W. Fetterman, Esq., counsel for the plaintiff, deponent saith, that, in 1784, there was no brick house in Pittsburg except the public buildings, and but one stone house owned by an individual, so far as his recollection serves. In the old military plan, between Ferry street, Second street, Market street, and the river, the buildings were very compact; out of that they were sparse and not very numerous.

JAMES ROSS.

Sworn and subscribed, April 18th, 1828, before

MAGS. M. MURRAY,
Mayor city of Pittsburg.

I do hereby certify that the foregoing deposition of James Ross was taken before me, at my office, in Pittsburg, on this 18th day of April, 1828, between the hours of ten in the morning and three in the afternoon, in the presence of W. W. Fetterman, Esq., counsel for the plaintiffs, and Neville B Craig, Esq., counsel for the defendants; and I do further certify that all the defendants reside in the city of Pittsburg, and that the said witness also resides in the said city, more than one hundred miles from the place of trial, and that this is the reason of the deposition aforesaid having been taken. And I do further certify that the said deposition was reduced to writing by me, and is in my proper handwriting, except the signature of the witness, which was signed in my presence.